

2014 WL 5391826 (N.Y.Sup.) (Trial Pleading)
Supreme Court of New York.
Bronx County

Phillip DRAKE, Plaintiff,

v.

THE CITY OF NEW YORK, Police Commissioner Raymond Kelly, First Deputy
Commissioner Rafael Pineiro, Chief Of Department Joseph Esposito, Deputy Inspector
Christopher McCormac John Doe Supervisors and John Doe Police Officers, Defendants.

No. 302643-2014.
May 13, 2014.

Summons

John J. Nomnenmacher, Esq., 744 Fairmount Avenue, Chatham, N.J. 07928, (212) 465-1110, for plaintiff

Plaintiff designates BRONX County as the place of trial.

The basis of venue is: Plaintiff's residence

Plaintiff resides at: [REDACTED]

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: NEW YORK, NEW YORK

March 10, 2014

<<signature>>

JOHN J. NOMNENMACHER, ESQ.

Attorney for Plaintiff

744 Fairmount Avenue

Chatham, N.J. 07928

(212) 465-1110

TO: THE CITY OF NEW YORK

100 Church Street New York, N.Y. 10007

POLICE COMMISSIONER RAYMOND KELLY One Police Plaza

New York, N.Y. 10038

FIRST DEPUTY COMMISSIONER RAFAEL PINEIRO CHIEF OF DEPARTMENT JOSEPH ESPOSITO

One Police Plaza

New York, N.Y. 10038

DEPUTY INSPECTOR **CHRISTOPHER MCCORMACK**

VERIFIED COMPLAINT

Plaintiff, by his attorneys, Bader Yakaitis & Nonnenmacher, LLP complaining of the Defendants, respectfully sets forth and alleges as follows:

PRELIMINARY STATEMENT

1. This is a Civil Rights action in which the Plaintiff seeks relief for Defendants' violation, under color of state law, of his rights, privileges and immunities secured by The Civil Rights Act of 1871, [42 U.S.C. Sections 1983](#) and [1985](#), the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and the Constitution and laws of the State of New York.
2. The Plaintiff, Phillip Drake, brings this action under [42 U.S.C. Sections 1983](#) and [1985](#) and related state laws seeking compensatory and punitive damages and attorney's fees under [42 U.S.C. Section 1988](#) for the Defendants' violation of his rights afforded by the United States and New York Constitution and under the laws of The State of New York.
3. Defendants, The City of New York, the individually named Defendants and John Doe Defendants, the exact number which is unknown at this time, acting individually and in their official capacities, jointly and severally, did cause plaintiff Phillip Drake, to be falsely arrested, falsely imprisoned, assaulted, battered, maliciously charged with crimes he did not commit and maliciously prosecuted him for crimes he did not commit.
4. The individually named Defendants and the "John Doe" Defendants being employees of the City of New York violated Plaintiff's Civil Rights, caused him serious personal injury, emotional harm and deprived him of his liberty.
5. The incident occurred on February 15, 2013 in front of 366 East 154th Street, Bronx, New York.
6. During his false arrest and imprisonment and while in police custody, the plaintiff was assaulted and battered by New York City Police Officers assigned to the 40th Precinct.
7. Plaintiff was thereafter maliciously prosecuted for crimes he did not commit.
8. Defendant Raymond Kelly was the Police Commissioner of the New York City Police Department at the time of this incident and as such was a superior and supervising officer of the police officers involved in the incident described in this complaint.

9. Defendant Rafael Pineiro was the First Deputy Commissioner of the New York City Police Department at the time of this incident and as such was a superior and supervising officer of the police officers involved in the incidents described in this complaint.

10. Defendant Joseph Esposito was the Chief of the Police Department at the time of this incident and as such was a superior and supervising officer of the police officers involved in the incidents described in this complaint.

11. Defendant Deputy Inspector **Christopher McCormack** was the commanding officer of the 40th Precinct at the time of this incident and as such was a superior and supervising officer of the police officers involved in the incident described in this complaint.

12. Yet to be named John Doe Police Officers were supervisors of the police officers involved in the incidents described in this complaint.

13. Yet to be named John Doe Police Officers were assigned to the 79th Precinct at the time of this incident.

14. John Doe, Commanding officer was a supervising officer at this Precinct when this incident occurred and is a superior officer of the officers involved in this incident.

15. John Doe, Commanding officer was a supervising officer at this Precinct when this incident occurred and is a superior officer of the officers involved in this incident.

16. Plaintiff seeks compensatory and punitive damages. Plaintiff also seeks an award of attorney fees and costs, and for such other and further relief as the court deems just and proper.

PRE CONDITIONS TO PLAINTIFF'S STATE LAW CLAIMS

17. A notice of claim was filed on April 17, 2013 by the plaintiff with respect to his causes of action which occurred on February 15, 2013 setting forth the time when, the place where and the manner in which this incident occurred.

18. The plaintiff appeared and testified at a statutory hearing in compliance with [General Municipal Laws, Section 50-H](#) on August 16, 2013.

19. More than thirty (30) days have elapsed since the presentation of these claims and the Defendants have not requested a physical examination of the Plaintiff pursuant to General Municipal Law Section 50H, the same having been waived by the Defendants.

20. This action is being commenced within the time limitations set forth in all applicable Federal and State Laws and Statutes.

JURY DEMAND

21. Plaintiff demands a trial by jury in this action on each and every one of his claims pursuant to the seventh amendment to The United States Constitution and [Fed. R. Civ. P. 38](#).

NATURE OF PROCEEDINGS

22. This is a proceeding for compensatory and punitive damages owing to the plaintiff as a result of violations of his Civil Rights under the First, Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States and under Federal Law, particularly Title 42 of The United States Code, Section 1983, 1985, Title 18 of The United States Code, [Section 1965\(e\)](#), [Title 18 of The United States Code](#), [Section 1965\(a\)](#), [Title 18 of The United States Code](#), Section 1962 and Title 28 of The United States Code, Section 1367(a).

PARTIES

23. Plaintiff, Phillip Drake is and was a citizen of the United States and is and was at all times relevant herein a resident of the State of New York having his residence in Bronx, New York.

24. Defendant The City of New York is a Municipal Corporation created and authorized under the laws of the State of New York.

25. The City of New York is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible.

26. The New York City Police Department is an agency and/or department of The City of New York and acts on its behalf in the area of law enforcement.

27. Defendant The City of New York maintained the 40th Precinct located at 257 Alexander Avenue, Bronx, New York.

28. Defendant The City of New York employed police officers for the purpose of law enforcement.

29. Defendants Raymond Kelly, Rafael Pineiro, Joseph Esposito, Deputy Inspector **Christopher McCormack** and John Doe Supervisors were responsible for the practices, policies and customs of the New York City Police Department, as well as for the hiring, screening, training, supervising, controlling, retaining and disciplining of the persons employed by the New York City Police Department.

30. Defendant Raymond Kelly is and was, at all times relevant to this complaint, the Commissioner of the New York City Police Department and is a final policy maker for purposes of the Police Department's policies, practices and customs.

31. As Commissioner of the New York City Police Department, Raymond Kelly was, at all times relevant to this complaint, responsible for the practices, policies and customs of the Police Department and its precincts and was responsible for the hiring, screening, overseeing, training, supervising, controlling, retaining and disciplining of officers who worked within the precincts.

32. As the First Deputy Commissioner, Rafael Pineiro was a commanding officer of the various precincts and was a final policy maker for purposes of the precincts policies, practices and customs.

33. As the First Deputy Commissioner, Rafael Pineiro was at all times relevant to this complaint responsible for the practices, policies and customs of the New York City Police Department and its precincts and was responsible for the hiring, screening, overseeing, training, supervising, controlling, retaining and disciplining of Officers who worked at precincts.

34. Chief of Department Joseph Esposito was a commanding officer of the New York City Police Department and was a final policy maker for purposes of its precinct's policies, practices and customs.

35. As the Chief of Department, Joseph Esposito was at all times relevant to this complaint, responsible for the practices, policies and customs of the New York City Police Department and its precincts and was responsible for the hiring, screening, overseeing, training, supervising, controlling, retaining and disciplining of officers who worked within the precincts.

36. Defendant Deputy Inspector **Christopher McCormack** was a commanding officer of the New York City Police Department and was a final policy maker for purpose of the 79th Precinct's policies, practices and customs.

37. As a Deputy Inspector in command of the 40th Precinct, Christopher McCormacki was at all times relevant to this complaint responsible for the practices, policies and customs of the New York City Police Department and its precincts and were responsible for the hiring, screening, overseeing, training, supervising, controlling, retaining and disciplining of officers who worked at the 40th Precinct.

38. John Doe Defendants were at all times mentioned superior officers at the 40th Precinct and at all times relevant to this complaint were responsible for the practices, policies and customs of the New York City Police Department and was responsible for the hiring, screening, overseeing, training, supervising, controlling, retaining and disciplining of Officers who worked at the 79th Precinct.

39. On February 15, 2013 The City of New York employed unknown "John Doe" Police Officers who were assigned to the 40 Precinct.

40. The John Doe Defendants were at all times relevant to this complaint, employed by the City of New York as police officers, supervisors, and/or commanding officers.

41. These John Doe Defendants included individuals who conspired to and/or acted in concert and/or did engage in the violation of plaintiff's rights described herein, or who failed to protect the plaintiff from violations of his constitutional rights.

42. On February 15, 2013 the City of New York employed the aforementioned individually named defendants and John Doe police officers who were agents, servants and/or employees of the City of New York and/or the New York City Police Department.

43. The individually named Defendants and yet to be named John Doe Defendants were at all times mentioned acting under color of state law, to wit, under color of the statutes, ordinances, customs, policies and/or practices of the State of New York and/or City of New York.

44. These Defendants were also acting within the scope of and in furtherance of their employment with the City of New York and The New York City Police Department.

45. At all times relevant herein, each of the individually named Defendants and the yet to be named John Doe Defendants acted under color of law in the course and scope of his or her duties and functions as an agent, employee, servant and/or officer of The City of New York and/or New York City Police Department in engaging in the conduct described herein.

46. At all times relevant herein, the individually named Defendants and the yet to be named John Doe Defendants have acted for and on behalf of The City of New York and/or The New York City Police Department, and incidental to the lawful pursuit of their duties as officers, agents, employees and/or servants of The City of New York and/or New York City Police Department.

47. At all times relevant herein, the individually named Defendants violated clearly established constitutional standards under the First, Fourth, Fifth, Eighth and Fourteenth Amendments of which a reasonable police officer and/or public official under his or her respective circumstances would have known to be so violative.

STATEMENT OF FACTS

48. Plaintiff Phillip Drake is an African American male.

49. On February 15, 2013 the plaintiff was residing at 366 East 154th Street, Bronx, New York.

50. At approximately 5:40 p.m. the plaintiff left 366 East 154th Street to go to a store.

51. As he was returning to his home, he saw two uniformed police officers, one male and one female, running towards him.

52. As they got close they yelled “get your fucking hands out of your pocket, and get up against the wall.”

53. Plaintiff complied with their request and said “I did not do anything.”

54. The plaintiff was then thrown face first into the wall and searched.

55. When the plaintiff asked why this was happening, the male officer said “you fit the description of a man with a gun.”

56. The police officers then ran plaintiff's identification.

57. When the police officers returned the plaintiff asked if he could go.

58. The officers then started harassing and ridiculing the plaintiff.

59. As the plaintiff was being harassed and ridiculed he pushed the bell to his apartment in the hopes of gathering witnesses to this event.

60. The police officers then violently handcuffed the plaintiff, threw him to the floor and began hitting him and kicking him.

61. The plaintiff was then thrown against the marked police car.

62. The plaintiff was then thrown face first into the car.

63. The plaintiff was then taken to the 40th precinct where he was further detained and prisoned for more than twelve hours.

64. The Plaintiff was then taken to Central Booking where he was further abused and detained.

65. The Plaintiff was then charged with crimes that he did not commit.

66. The Plaintiff is being maliciously prosecuted for crimes he did not commit.

67. The charges brought against the plaintiff were eventually dismissed.

68. On February 15, 2013 the plaintiff was falsely arrested, confined, imprisoned, battered, assaulted, handcuffed, humiliated, verbally and physically abused and forcibly taken against his will without probable cause, justification or provocation by agents, servants and employees of The City of New York and New York City Police Department and more particularly by yet to be identified Police Officers of the 40th Precinct.

69. As a result of this incident plaintiff was knowingly held in custody and deprived of his freedom and liberty.

AS AND FOR A FIRST CAUSE OF ACTION FOR FALSE ARREST

70. Plaintiff repeats and reiterates all of the allegations contained in paragraphs “1” through “69” as if fully set forth herein.
71. The plaintiff was falsely arrested by the John Doe and Jane Doe Police Officers.
72. The plaintiff was arrested by the John Doe Police Officers without probable cause and without a warrant.
73. That the aforesaid arrest was caused by the defendants, its agents, servants and employees, including but not limited to the police officers without a warrant and without any reasonable cause or belief that plaintiff was in fact guilty of any crime.
74. That the aforementioned officers intended to confine plaintiff; plaintiff was conscious of the confinement; plaintiff did not consent to the confinement and the confinement was not otherwise privileged.
75. That by reason of the false arrest of plaintiff, the plaintiff was subjected to great indignities, humiliation and ridicule and was greatly injured in his credit and circumstances and was prevented and hindered from performing and transacting her necessary affairs and was caused to suffer much pain in both mind and body.
76. The aforementioned police officers intentionally and without the right to do so, arrested the plaintiff who was aware of the arrest and did not consent to it.
77. Plaintiff's arrest was unlawful and was made without justification.
78. Based on the facts and circumstances presented, a reasonably prudent person would not believe that plaintiff committed a crime.
79. By reason of the aforementioned, the plaintiff suffered physical damages, great mental anguish and was deprived of his constitutional rights.

AS AND FOR A SECOND CAUSE OF ACTION FOR FALSE IMPRISONMENT

80. Plaintiff repeats and reiterates all of the allegations contained in paragraphs “1” through “79” as if fully set forth herein.
81. Following his arrest, the defendants falsely imprisoned the plaintiff.
82. The defendants intended to confine the plaintiff.
84. The plaintiff was conscious of the confinement.
85. The plaintiff did not consent to the confinement.
86. The confinement was not privileged.
87. By reason of the aforementioned, the plaintiff suffered physical harm, great mental anguish and was deprived of his constitutional rights.

AS AND FOR A THIRD CAUSE OF ACTION FOR ASSAULT

88. Plaintiff repeats and reiterates all of the allegations contained in paragraphs “1” through “87” as if fully set forth herein.

89. On February 15, 2013 in the course of being falsely arrested, the plaintiff was assaulted by the aforementioned agents, servants, and/or employees of the defendants The City of New York and The New York City Police Department.

90. During the course of this unlawful arrest the plaintiff was subjected to the excessive use of force.

91. During the course of his arrest, the aforementioned police officers intentionally placed the plaintiff in apprehension of imminent harm and offensive contact.

92. During the course of this unlawful arrest the plaintiff was the victim of police brutality.

93. During the course of his arrest, the aforementioned police officers intentionally caused the plaintiff to become concerned that they were about to cause him harm and that they were about to subject him to offensive contact.

94. The aforementioned officers had the real and/or apparent ability to bring about that harm and contact.

95. The plaintiff reasonably believed that harm and contact was about to occur.

96. By reason of the aforementioned, the plaintiff suffered physical harm, great mental anguish and was deprived of his constitutional rights.

AS AND FOR A FOURTH CAUSE OF ACTION FOR BATTERY

97. Plaintiff repeats and reiterates all of the allegations contained in paragraphs “1” through “96” as if fully set forth herein.

98. On February 15, 2013 in the course of being arrested, the plaintiff was battered by the aforementioned police officers who were employed by The City of New York and New York City Police Department.

99. During the course of his unlawful arrest, the aforementioned police officers intentionally touched the plaintiff without his consent, and caused him offensive bodily contact.

100. During the course of his arrest, the aforementioned police officers used excessive force.

101. A reasonable person would conclude that the contact was offensive, it was done with the intent to harm the plaintiff and the contact offends a reasonable sense of personal dignity and/or was wrongful.

102. Defendants use of force was not justified and was done willfully and maliciously.

103. Defendants committed the foregoing acts intentionally, willfully and with malicious disregard for plaintiff's rights.

104. The plaintiff was the victim of police brutality.

105. Said use of excessive force deprived plaintiff of the constitutional right to bodily security and liberty under the Fourteenth Amendment to the United States Constitution and amounted to an unreasonable physical seizure of plaintiff under the Fourth Amendment to the United States Constitution and constituted cruel and unusual treatment under the Eighth Amendment to the United States Constitution.

106. By reason of the aforementioned, the plaintiff suffered physical damages, suffered great mental anguish and was deprived of his constitutional rights.

AS AND FOR A FIFTH CAUSE OF ACTION FOR VIOLATION OF CIVIL RIGHTS

107. Plaintiff repeats each and every allegation contained in paragraphs “1” through “106” as if fully set forth herein.

108. The aforesaid officers of The City of New York and New York City Police Department were acting as agents, servants and/or employees of The City of New York and New York City Police Department.

109. The aforesaid officers were acting within the course and scope of their employment.

110. The aforementioned acts of each of the defendants were under color of statutes, ordinances, regulations, custom and usage of the State of New York.

111. The aforementioned acts of each of the defendants deprived plaintiff of the privileges and immunities guaranteed to plaintiff as a citizen of the United States, by [amendments IV, V, VII](#) and [Section I of amendment XIV of the Constitution of the United States](#) and by the Constitution of the State of New York.

112. As a direct and proximate result of the defendants' actions, plaintiff was deprived of rights, privileges and immunities secured to him under the Constitution and laws of The State of New York and The United States, including, but not limited to her rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and [42 U.S.C Section 1983](#).

113. The aforementioned acts of the defendants constituted cruel and unusual punishment of plaintiff and as such violated [amendment VIII to the Constitution of the United States](#) and of the State of New York.

114. By reason of the foregoing, the John and Jane Doe defendants are liable to plaintiff pursuant to Title 42 of the United States Code, including but not limited to [Sections 1981, 1983](#) and [1985](#) thereof.

115. By reason of the aforementioned the plaintiff suffered physical damages, suffered great mental anguish and was deprived of his constitutional rights.

AS AND FOR A SIXTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S CIVIL RIGHTS

116. Plaintiff repeats each and every allegation contained in paragraphs “1” through “115” as if fully set forth herein.

117. All of the acts and omissions by the named and unnamed individual police officers described were carried out pursuant to overlapping policies and practices of The City of New York and New York City Police Department which were in existence at the time of the conduct alleged herein and were engaged in with the full knowledge, consent, and cooperation and under the supervisory authority of The City of New York and New York City Police Department.

118. Defendant The City of New York and New York City Police Department, by their policy-making agents, servants and employees, authorized, sanctioned and/or ratified the individual police defendants' wrongful acts; and/or failed to prevent or stop those acts; and/or allowed or encouraged those acts to continue.

119. The actions of the individual police defendants resulted from and were taken pursuant to the following de facto policies and/or well settled and widespread customs and practices of The City of New York and New York City Police Department, which were and are implemented by members of its police department:

(a) Members of the 40 Precinct are encouraged and/or allowed by their supervisors to physically brutalize suspects and arrestees without consequence - i.e. without fear of reprimand, discipline or even re-training by the Department;

(b) New York City Police Officers, including the 40 Precinct engage in systemic and ubiquitous perjury, both oral and written, to cover-up constitutional and state law violations committed against civilians by either themselves or their fellow officers, supervisors and/or subordinates. They did so and do so with the knowledge and approval of their supervisors, commanders and Police Commissioners who all:

(i) tacitly accept and encourage a code of silence wherein police officers refused to report other officers misconduct or tell false and incomplete stories designed to cover for and/or falsely exonerate accused police officers; and

(ii) encourage and/or fail to discipline officers for “testifying” and/or fabricating false evidence to initiate and continue the malicious prosecution of civilians in order to cover-up civil right violations perpetrated by themselves or fellow officers, supervisors and/or subordinates against those civilians; and

(c) The City of New York and New York City Police Department with the knowledge, approval and encouragement of Police Commissioners, fail to properly train, supervise and/or discipline officers concerning the constitutional rights of individuals in their care and custody.

120. The Defendants established a custom, policy and/or practice of encouraging, approving and/or tolerating the New York City Police Department's use of excessive force and acts of misconduct against civilians, especially those civilians who are minorities and subsequent attempts to conceal such actions by failing to adequately train, supervise and discipline its agents, employees and officers.

121. The Defendants were deliberately indifferent to the use of improper procedures in the detention and arrest of civilians, especially those civilians who are minorities and established a custom, policy and/or practicing of encouraging, approving and/or tolerating the use of said improper procedures by the New York City Police Department and subsequent attempts to conceal such actions by failing to adequately train, supervise and discipline its agents, employees and officers.

122. The defendants' actions were undertaken under the color of law and would not have existed but for said defendants' use of their official power.

123. The supervisors and policy making officers of defendants, as a matter of policy, were deliberately indifferent to said practices and have failed to take steps to terminate the above detailed practices and have failed to discipline or otherwise properly supervise the individuals engaged in such practices.

124. Defendants have failed to properly or effectively train their agents, servants and/or employees with regard to proper constitutional and statutory limits on the exercise of their authority, and such failures continue to this day.

125. Defendants have sanctioned the policy and practices heretofore described through its deliberate indifference to the effect of such policy and practices upon the constitutional rights of plaintiff and others similarly situated.

126. The Defendants' motivations were in contravention of the United States Constitution and the Constitution of the State of New York.

127. The City of New York and New York City Police Department had a policy of encouraging abuse and assaults or of ratifying same by systemic deficiencies in disciplining officers or in the investigation of complaints against officers.

128. The foregoing acts, inaction, omissions and systemic failures are customs and policies of the municipal defendants which have caused its police officers to believe that determination of the rights to use force and the amount of allowable legal force was within their discretion and that complaints of the use of excessive force would not be honestly or properly investigated, with the foreseeable result that officers would be likely to use improper force.

129. The existence of the foregoing unlawful de facto policies and/or well-settled and widespread customs and practices is known to, encouraged and/or condoned by supervisory and policy making officers and officials of The City of New York and New York City Police Department including its Police Commissioner.

130. Despite knowledge of such unlawful de facto policies, practices and/or customs, these supervisory and policy making officers and officials of The City of New York and New York City Police Department including its Commissioner, have not taken steps to terminate these policies, practices and/or customs, do not discipline individuals who engage in such policies, practices and/or customs or otherwise properly train police officers with regard to the constitutional and statutory limits on the exercise of their authority, and insert sanctions and ratify these policies, practices and/or customs through their active encouragement of, deliberate indifference to and/or reckless disregard of the effect of said policies, practices and/or custom upon the constitutional rights of persons in their care and custody.

131. As a result of the aforesaid violation of Plaintiff's rights, he sustained injuries and damages previously described in this complaint.

132. As a direct and proximate result of the aforesaid acts, inaction, omissions and systemic failures the individually named officers used excessive force against the plaintiff.

133. By reason of the aforementioned the Plaintiff suffered physical damages, great mental anguish and was deprived of his constitutional rights.

AS AND FOR A SEVENTH CAUSE OF ACTION FOR VIOLATION OF 42 U.S.C. SECTION 1985(3)

134. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs "1" through "133 as if fully set forth herein.

135. The Defendants are liable under [42 U.S.C. Section 1985 \(3\)](#) for conspiring to violate plaintiffs rights guaranteed by the aforementioned amendments to the United States Constitution.

136. The aforementioned defendant officers conspired, planned and agreed to treat plaintiff in the manner previously described for the purpose of depriving him, either directly or indirectly, of equal protection of the laws and/or of equal privileges and immunities under the United States Constitution and the New York Constitution.

137. The actions and conduct taken against the plaintiff was done in furtherance of their conspiracy.

138. As a result the plaintiff suffered physical injury, emotional harm, was subject to cruel and unusual punishment in violation of the 8th Amendment to the United States Constitution and was deprived of his constitutional rights as previously described.

139. The defendants' conspiracy was motivated by plaintiff's race.

140. The existence of the foregoing unlawful de facto policies and/or well-settled and widespread customs and practices is known to, encouraged and/or condoned by supervisory and policy making officers and officials of The City of New York and New York City Police Department including its Police Commissioner.

***AS AND FOR A EIGHTH CAUSE OF ACTION FOR FAILURE TO
INTERVENE - FOURTH AMENDMENT - 42 U.S.C. SECTION 1983***

141. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs “1” through “140” as if fully set forth herein.

142. Members of the New York City Police Department have an affirmative duty to assess the constitutionality of interactions between their fellow members of service and civilians and to intervene where they observe another member of the police department employing unjustified and excessive force against a civilian or an arrestee.

143. The aforementioned named and unnamed officers were present while the plaintiff was being assaulted, battered and falsely arrested.

144. The use of force against the plaintiff was obviously excessive and unjustified under the circumstances yet the other officers present failed to take any action or make any effort to intervene, halt or protect the plaintiff from being physically brutalized.

145. Defendant's violation of plaintiff's constitutional rights by failing to intervene in the clearly unconstitutional use of force against the plaintiff resulted in the injuries and damages set forth above.

***AS AND FOR A NINTH CAUSE OF ACTION INDIVIDUAL SUPERVISORY
LIABILITY - 42 USC SECTION 1983 AGAINST ALL DEFENDANT SUPERVISORS***

146. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs “1” through “145” as if fully set forth herein.

147. Defendants' supervisors were, at all relevant times, supervisory personnel in the New York City Police Department, with oversight responsibility for the training, instruction, supervision and discipline of the named and unnamed individual police officers who deprived plaintiff of her federal constitutional rights.

148. The conduct of the officers and their prior experience was so notorious that the supervising defendants knew or should have known of the likelihood of harm to the plaintiff or someone similarly situated.

149. These supervisory defendants failed to intervene to prevent the actions taken against the plaintiff.

150. These supervisory defendants were negligent in failing to take meaningful action to prevent the actions taken against the plaintiff which resulted in the deprivation of plaintiff's constitutionally guaranteed rights.

151. The individual supervisor defendants knew or should have known that the named and unnamed police officers were conducting unreasonable and retaliatory actions against the plaintiff aimed at harming him and depriving him of his constitutionally guaranteed rights.

152. The individual supervisory defendants participated in conduct aimed at harming the plaintiff and depriving him of his constitutionally guaranteed rights.

153. The individual supervisory officers either condoned or looked the other way at the prior conduct and experiences of the aforementioned officers.

154. The individual supervisory officers were personally involved in either ordering or failing to take preventative and remedial measures to guard against, plaintiff's constitutional deprivations.

155. The supervisory defendants created the atmosphere at the precinct which created opportunity for the actions against plaintiff to take place.

156. The supervisory defendants knew, or in the exercise of due diligence, should have known that the actions taken against plaintiff by the John and Jane Doe officers were likely to occur.

157. The failure of the individual supervisory defendants to train, supervise and/or discipline the named and unnamed individual police officers defendants with respect to the constitutional rights of arrestees amounted to gross negligence, deliberate indifference or intentional misconduct which directly and proximately caused the injuries and damages to the plaintiff.

AS AND FOR A TENTH CAUSE OF ACTION MALICIOUS PROSECUTION

158. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "157" as if fully set forth herein.

159. That following his arrest, plaintiff was wrongfully, falsely and maliciously charged by defendants and prosecuted with various crimes of which he was innocent.

160. That as a result thereof, plaintiff was required to appear in court to defend against these wrongful charges.

161. That as a result of the aforesaid malicious prosecution, plaintiff was subjected to great indignities, humiliation ridicule, was greatly injured in her credit and circumstances and was prevented and hindered from performing and transacting her necessary affairs and business and employment, and was caused to suffer much pain in both mind and body, and to sustain economic loss, and was otherwise damaged.

AS AND FOR AN ELEVENTH CAUSE OF ACTION NEW YORK STATE CONSTITUTIONAL VIOLATIONS

162. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs "1" through "161" as if fully set forth herein.

163. The aforementioned conduct of the named and unnamed officers violated the protections guaranteed to the plaintiff by the [New York State Constitution, Article 1, Sections 6, 8, 11 and 12](#) including but not limited to the right to be free from unreasonable seizure of their person, including excessive force.

164. Defendants deprivation of plaintiff's rights under the New York State Constitution resulted in the injuries and damages suffered by the plaintiff.

AS AND FOR A TWELFETH CAUSE OF ACTION NEGLIGENCE

165. Plaintiff repeats each and every allegation contained in paragraphs "1 through "164" as if fully set forth herein.

166. The defendants, their agents, servants or employees acted negligently, carelessly and recklessly in the care and treatment given to the plaintiff during his arrest.

167. The individual defendants by their aforementioned acts, negligently failed to use due care in the performance of their duties in that they, among other negligent acts, failed to perform their duties as a reasonably prudent and careful police officer, detective and/or supervisor would have done under similar circumstances.

168. The negligent actions of the individual defendants directly and proximately caused plaintiffs injuries and damages as set forth above.

169. The Defendants' negligence was proximate cause of plaintiffs damages.

AS AND FOR A THIRTEENTH CAUSE OF ACTION NEGLIGENT RETENTION AND HIRING

170. Plaintiff repeats each and every allegation contained in paragraphs "1" through "169" as if fully set forth herein.

171. The aforesaid occurrences took place by reason of the Municipal Defendants, negligent training of the aforesaid Police Officers.

172. The aforesaid occurrences took place by reason of the Municipal Defendants' negligent hiring and retention of the aforesaid police officers.

173. The Municipal defendants, their agents, servants or employees acted negligently, carelessly and recklessly in hiring and/or retaining the individually named defendants in that said individual defendants were or should have been known to be employees who abused and misused their position, who were abusive or who acted intentionally and/or recklessly toward the public. The Defendants were further negligent in failing to discipline or retain these officers.

174. By reason of the foregoing the plaintiff was seriously injured.

175. The defendants, their agents, servants or employees acted negligently, carelessly and recklessly in supervising and/or disciplining the individually named defendants in that said individual defendants were or should have been known to be employees who abused and misused their position, who were abusive, or who acted intentionally and/or recklessly toward the public.

***AS AND FOR A FOURTEENTH CAUSE OF ACTION FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS***

176. Plaintiff repeats each and every allegation contained in paragraphs "1" through "175" as if fully set forth herein.

177. The actions of the defendants in assaulting and battering the plaintiff were outrageous and beyond any norms acceptable to society.

178. Defendants acted with the desire and intent to cause plaintiff emotional distress, or acted under circumstances known to them which made it substantially certain that they would cause such emotional distress.

179. Defendants acted with utter disregard of the consequences of their actions.

180. As a result of the aforesaid, plaintiff sustained injuries and damages previously described in this complaint, including intentional infliction of emotional distress.

AS AND FOR A FIFTEENTH CAUSE OF ACTION NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

181. Plaintiff repeats each and every allegation contained in paragraphs “1” through “180” as if My set forth herein.

182. The individually named police officers and John Doe officers, by their aforementioned acts, did negligently cause plaintiff to suffer mental and emotional distress.

AS AND FOR A SIXTEENTH CAUSE OF ACTION RESPONDEAT SUPERIOR

183. Plaintiff repeats each and every allegation contained in paragraphs “1” through “ 182” as if fully set forth herein.

184. The Municipal Defendants are vicariously responsible for the actions of the individual defendants under the doctrine of Respondeat Superior.

PUNITIVE DAMAGES

185. Plaintiff will be seeking punitive damages against each of the named police officers.

WHEREFORE, Plaintiff demands the following relief jointly and severally against all defendants:

- (a) A declaration that Defendants violated plaintiff's Federal Civil Rights;
- (b) Compensatory damages for the physical and emotional injuries suffered by plaintiff by reason of defendants unlawful and unjustified conduct, in an amount just and reasonable and in conformity with the evidence at trial;
- (c) Punitive damages against the individual defendants;
- (d) Attorneys fees;
- (e) The costs and disbursements of this action; and
- (f) For such other, further and different relief as is just and proper under the circumstances.

Dated: New York, New York

March 10, 2014

Yours, etc.

<<signature>>

JOHN J. NONNENMACHER, ESQ.

Attorneys for Plaintiff

744 Fairmount Avenue

Chatham, N.J. 07928

(212) 465-1110

VERIFICATION

STATE OF NEW YORK

COUNTY OF NEW YORK

The undersigned, being an attorney duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury; that I am one of the attorneys for the plaintiff(s) in the within action.

That I have read and know the contents of the foregoing summons and complaint and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

This verification is made by affirmant and not by the plaintiff(s) herein because the plaintiff(s) is/are not within the county where affirmant maintains his/her office.

This verification is based on information furnished to affirmant by the plaintiff(s) in this action and information contained in affirmant's file.

Dated: New York, NY

March 10, 2014

<<signature>>

JOHN J. NONNENMACHER

SUMMONS AND COMPLAINT

JOHN J. NONNENMACHER, ESQ.

Attorney for Plaintiff

744 Fairmount Avenue

Chatham, N.J. 07928

(212) 465-1110

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